

# **The New Final Rule: Changes to Section 503 Regulations**

# Presenters

- Naomi Levin, OFCCCP Branch Chief for Policy
- Suzan Chastain, Office of the Solicitor  
&
- Jessica Lyn, Office of the Solicitor

# Overview

- Background
- Effective Date
- Key Changes to the Regulations
- Questions & Answers

# Section 503

Section 503 prohibits employment discrimination on the basis of disability by Federal government contractors and subcontractors. Section 503 also requires that covered contractors take affirmative action to employ and advance in employment qualified individuals with disabilities.

# Why Change?

- Framework unchanged since the 1970's.
- Unemployment rate of IWDs remains significantly higher.
- Revisions are intended to enhance contractor accountability for compliance and ultimately increase employment opportunities.

# The Final Rule

- Updates and strengthens the regulations to aid contractors in the recruitment and hiring of IWDs and facilitates compliance with the law.
- Increase contractor accountability for meeting their AA obligations.

# **Effective Date**

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**180 days**

After publication in the Federal Register.

# Phased in Compliance

- Contractors with existing AAPs on the effective date may wait to come into compliance with Subpart C as part of their standard AAP review and updating cycle.
- Must comply with other revised requirements by the effective date.



# Final Rules

## Key Provisions

# Definitions

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## **41 CFR 60-741.2**

Revises definitions relating to “disability”: including “major life activities,” “major bodily functions,” “regarded as” having a disability and “substantially limits” in accordance with changes made by the ADAAA.

# Equal Opportunity Clause

## **Providing Notices to Applicants & Employees**

### **41 CFR 60-741.5**

- Contractor can satisfy its posting obligation of notices of rights and obligations electronically for employees with telework arrangements or for those who do not work at the contractor's physical location.
- If contractor uses electronic or internet-based application processes, an electronic notice of employee rights and contractor obligations must be "conspicuously stored with, or as part of, the electronic application."

# Equal Opportunity Clause

## **Contractor Solicitations and Advertisements 41 CFR 60-741.5**

New paragraph requires contractors to state in job solicitations and advertisements that it is an equal opportunity employer of individuals with disabilities.

# Equal Opportunity Clause

## **Incorporating the EO Clauses by Reference**

### **41 CFR 60-741.5 (a)**

Requires citation to EO Clause and the inclusion of specific mandatory language:

**“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.”**

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# Prohibitions

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## 41 CFR 60-741.21

- Adds that reasonable accommodation need not be provided to individuals who are only “regarded as” having a disability. (6)(v)
- Adds that use of qualification standards, employment tests, or other selection criteria that are “based on an individual’s uncorrected vision” are prohibited unless consistent with business necessity. (7)(ii)

# Prohibitions

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## **41 CFR 60-741.21**

- Adds that reasonable accommodation extends to contractors' use of electronic or online job application systems. Contractors' must ensure that IWDs who cannot use the system have equal opportunity to apply and be considered for all jobs.

# Invitation to Self-Identify

## **41 CFR 60-741.42**

- Pre-offer: invitation to self-identify as an IWD.
- Post-offer: invitation to self-identify as IWD.
- Employees: invitation to all employees in first year; and every five years thereafter; at least one reminder in intervening years.
- All invitations use form posted on OFCCCP Web site.



# **Timing of Pre-Offer Inquiries**

- Ask applicants to self-identify when applicants are asked for other demographic information under EO 11246.
- Harmonizes Section 503 with the EO Internet Applicant Rule.
- “Basic qualification” screens may not screen out on the basis of disability unless job-related and consistent with business necessity.

# AAP Elements

## **Outreach and Recruitment**

### **41 CFR 60-741.44(f)**

- Requires outreach and recruitment; provides examples; and retains contractor flexibility.
- Requires documentation of activities and annual written assessment of the effectiveness of each of its activities.
- If totality of efforts not effective, must identify and implement alternative efforts.
- **Retain** these records for **3 years**.

# AAP Elements

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## Data Collection Analysis

### 41 CFR 60-741.44(k)

- Requires contractors to document and update annually:
  - Number of IWD applicants;
  - Total number of applicants for all jobs;
  - Total number of job openings and jobs filled;
  - Number of IWDs hired; and
  - Total number of applicants hired.
- Maintain these records for 3 years.

# Utilization Goal

## **41 CFR 60-741.45**

**Establishes a nationwide 7% utilization goal.**

- Apply goal to each job group annually, except if 100 or fewer employees may use entire workforce
- If goal not met, determine if impediments to EEO exist; take steps to correct any identified problems.
- Failure to meet goal is NOT a violation & will NOT carry penalties.

# Compliance Evaluations

## **41 CFR 60-741.60**

- Adds a pre-award compliance review procedure.
- Clarifies that OFCCP may need to examine information after the date of the scheduling letter.
- States that OFCCP may request that documents be provided either on-site or off-site during compliance checks and that focused reviews may be conducted both on-site and off-site.

# Recordkeeping

## **Three year recordkeeping requirement 41 CFR 60-741.80**

- External outreach and recruitment efforts (60-741.44(f)(4))
- Data collection analysis (60-741.44(k))

# Access to Records

## **41 CFR 60-741.81**

- Requires that contractors must provide records and other information “in any of the formats in which they are maintained, as selected by OFCCP.”
- Confirms OFCCP’s commitment to treat records provided by contractors as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act.

# Appendix A

## **Guidelines on Contractors Duty to Provide Reasonable Accommodation**

- Minor changes to update the guidelines and conform them to changes made in the Final Rules.



# Appendix B

Provides “best practice” guidance for contractors who voluntarily choose to adopt and implement written reasonable accommodation procedures.

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# Questions?

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## Contact Us

- Write us - Office of Federal Contract Compliance Programs 200 Constitution Avenue, NW Washington, DC 20210
- Call us - (800) 397-6251
  - TTY: (877) 889-5627
- Email us - [ofccp-public@dol.gov](mailto:ofccp-public@dol.gov); or
- Visit our website - [www.dol.gov/ofccp](http://www.dol.gov/ofccp)